

**Decision Notice
& Finding of No Significant Impact
Pine Lodge and Eagle Creek Recreation Residences
USDA Forest Service
Smokey Bear Ranger District, Lincoln National Forest
Lincoln County, New Mexico**

Decision and Reasons for the Decision

The purpose of the initiative is to provide for continuation of the two recreation residences located on the Smokey Bear Ranger District, Lincoln National Forest. This action responds to the goals and objectives outlined in the Lincoln Resource Management Plan (LRMP), and helps move the project area towards desired conditions described in that LRMP and applicable Forest Service direction.

There are three needs for this project:

- There is a need for SUP Permits (SUPs) to cover all the Eagle Creek and Pine Lodge recreation residences. The majority of the existing SUPs will expire on December 31, 2008. The remaining SUP's will expire on December 31, 2009.
- There is a need to approve the reconstruction of 12 cabins lost at Pine Lodge in the Peppin Wildfire of 2004.
- There is a need for consistency with Forest Plan direction.

Recreation residences are a valid use of National Forest System lands, and an important component of the overall National Forest recreation program. It is Forest Service policy to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of these residences (FSM 2347).

The majority of Pine Lodge and Eagle Creek Summer Home recreation residence permits will expire on December 31, 2008. The remaining SUPs will expire on December 31, 2009. More than 5 years have passed since these recreation residence tracts were analyzed in the Lincoln LRMP. Because of this, an environmental review and documentation is required as indicated in FSM 2721.23c and FSH 2709.11.

The 1994 National Policy set direction for issuing new permits for recreation residences. Decisions to issue new recreation residence permits, following expiration of the current permit, requires a determination of consistency with the current Forest plan. A determination of consistency with the LRMP has been completed in accordance with Forest Service Handbook direction. That determination found the reconstruction of cabins can be made consistent by amending the LRMP standards and guidelines to bring the LRMP in agreement with current Forest Service policy.

The Forest followed national direction in FSM 2721.23 and FSH 2709.11 for the replacement of the Pine Lodge Summer Home burnt structures. An environmental review determined whether the burned over lot can safely be occupied in the future under Federal and State laws, and whether that use remains consistent with the LRMP. If necessary, in-lieu-lots will be offered at the Pine Lodge and Eagle Creek tracts for reconstruction of cabins if a burned cabin site is determined not safe. If permits are not issued for reconstruction, they will still expire on December 31, 2008 or December 31, 2009.

An interdisciplinary team (ID) was formed to: 1) Conduct an environmental analysis document identifying the effects of continuation of recreation residence use by issuing new SUPs when the current permit expires, 2) Approve the reconstruction of cabins lost in the Wildfire, and 3) determine Eagle Creek and Pine Lodge recreation residence consistency with the Lincoln LRMP, 4) analyze by amending the plan to meet Forest Service Handbook Direction.

The environmental assessment (EA) documents the analysis of 2 alternatives, No Action and Proposed Action to meet this need.

Decision

Based upon my review of all alternatives, and comments I have received, I have decided to implement Alternative 2, the Proposed Action. The Proposed Action was designed to meet the purpose and need described in Chapter 1 of the Environmental Assessment and was used as a starting point for generating public comments and issues.

The Smokey Bear Ranger District will reissue recreation residence SUP permit to the same people holding the current permit for the 18 sites at the Pine Lodge Summer Home tract, (6 existing cabins 12 cabins lost in the Wildfire) and 23 sites in the Eagle Creek Summer Home tract. Re-issuance of the SUP permit will allow the continuation for another 20-year period following the expiration of their current SUP permit date on December 31, 2008 or December 31, 2009, provided they meet applicable county, state, and federal requirements. No additional recreation residences beyond the existing 41 sites will be authorized.

Terms of the SUP Permits will comply with national direction effective at the time the new permit is issued. This analysis assumes that the current standard terms will remain in effect. Should these terms change prior to issuance of the permits any change effects will be addressed before the permits are issued.

The SUP permit allows for use, occupancy, and maintenance of recreation residences and associated lot surrounding the structure. Lots and structures are maintained for the use and enjoyment of holders and their guests. Cabin use shall not be used as a principal residence. Permit holders must be in compliance with relevant federal and state laws as well as county and state building, environmental health and fire codes.

In accordance with national direction, The Lincoln National Forest will allow the rebuilding of twelve cabins burnt at the Pine Lodge during the peppin Wildfire. An environmental review of the twelve burnt sites was completed to determine whether a lot can be safely occupied, FSM 2721.23a (13). For sites determined to be unsafe, holders will be offered as provided by FSN 2347.1, paragraph 6, and FSH 2709.11, section 41.23c, an in-lieu-lot in the Pine Lodge or Eagle Creek Summer Home tract. New sites will have the same footprint as the holder's previous site of approximately a quarter of an acre with the same square footage or less for the burnt structure. To keep the current theme of the Pine Lodge and Eagle Creek Summer Home tract, new cabins will be similar to existing structures in repeating line, color, and texture of a timbered site. The holder will have two (2) years to complete construction of their cabins once documentation is completed and authorization is given.

In the Pine Lodge Summer Home tract, permittees will not be allowed to construct cabins on the identified three lots, 1, 3, and 45 due to safety concerns. Cabins construction will be allowed on identified in-lieu-lot or lots deemed safe where cabins were burned. One cabin will be allowed an in-lieu-lot in Eagle Creek Summer Home tract.

Existing off-lot improvements owned and managed by the homeowners associations (such as water systems, the lodge at Eagle Creek) are or will be authorized under a separate SUP permit to the homeowners associations. Evaluation of the water system and lodge is included in this proposal. Roads within the recreation residences tracts will be under permit to the individual association, and have a road maintenance agreement in place.

An amendment to the LRMP needs to be completed to make it consistent with national direction relating to the rebuilding of recreation residences. A consistency review of the LRMP Standards and Guidelines for Lands, J01 currently identified that the Lincoln National Forest would:

*"Provide for continuation of existing summer home area at (Pine Lodge, page 60 or Eagle Creek page 80) **Permits will not be issued for unoccupied lots or for reconstruction**".*

To be consistent with national direction, and initiate the Proposed Alternative the LRMP, Standards and Guidelines for Lands, J01 will be amended to read:

Existing permits may be issued for continuation of existing summer home area at Pine Lodge upon acceptance of an application for renewal and completion of the appropriate level of environmental analysis.

After a catastrophic event, the authorized officer would conduct an analysis to determine whether improvements can be safely occupied and or rebuilt. Except for those approved for use as in-lieu lots, permits will not be issued for unoccupied lots. (Pine Lodge, page 60 or Eagle Creek page 80)

Permittees with existing cabins would have to be in compliance with the terms and conditions of their current SUP permit and meet county codes for septic/sanitary systems and potable water systems for any apparent or obvious health and safety deficiencies. New construction would conform to county, state, and federal codes current to the time of construction.

A letter will be sent to each permittee that lost a cabin at Pine Lodge requesting if they intend to construct a cabin. Permittee response will be mailed to the Smokey Bear District Ranger.

Permittees who chose not to rebuild or apply for an in-lieu-lot by a specified date will receive a letter from the District Ranger stating that their Recreation Residence SUP Permit is revoked (SUP, Clause X, B). To some degree, most lots on which improvements were destroyed by the wildfire have been cleared of debris leaving only foundations, and chimneys. Rock retaining walls were retained for site erosion protection. Of the 12 cabins sites, debris from two sites has not been removed.

The existing recreation residence SUP permits will expire on December 31, 2008. The remaining SUPs will expire on December 31, 2009. All SUPs will be issued starting on January 1, 2009. This decision will allow for authorizing a continuing use of recreation residences that is consistent with the LRMP, and minimizes the environmental effects and hazards of continued occupancy beyond any SUP expiration date. Issuance of SUP allows for use, occupancy, and maintenance of recreation residents and associated lots. Permittees are required to meet the following general conditions:

- 1) Permit holders must be in compliance with the terms and conditions of their current Term Special Use Permit, FS-2700-5a and CFR 36 Part 251.56;
- 2) Permit holders must be in compliance with all federal, state, county, and municipal laws for sanitation and water systems which allows for existing, non-conforming (SUP, Clause IV, A);
- 3) Each permit holder will have an Operation and Maintenance (O&M) Plan showing specific actions necessary to maintain compliance (SUP, Clause II);
- 4) If a threatened, endangered, or sensitive species is found that affects either recreation resident tract for the duration of the SUP, the forest biologist will be notified to determine mitigation measures for protection of the species (SUP Clause XI, G);
- 5) Permit holders, shall be responsible for the protection from damage of all identified cultural resources within the area which may be affected by their actions. The permit holder shall immediately notify the SUP administrator if any cultural resources are discovered and halt all work (SUP Clause XI, F);
- 6) SUP and O&M Plans will be prepared prior to fall of 2008, and will be issued effective January 1, 2009

Forest Service Handbook 2709.11,41.23a, 3 states, "Ensure the current use is in full compliance with the terms of the SUP before issuing the new term permit." The environmental analysis must be conducted with the assertion that SUP holders are in

compliance because a decision to issue permits requires the holder to be in compliance to receive that SUP. Not to require compliance would violate Forest Service regulations and policy. The purpose and need is to continue recreation residence use, which requires compliance for SUP issuance.

Other Alternatives Considered

No Action

Under the No Action alternative, in lieu lots would be offered and no rebuilding would occur. The current 29 cabins would receive a new 10 year term special use permit upon expiration of their permits on December 31, 1008 or December 31, 2009. At the end of ten years, all above ground improvements will have to be removed from National Forest System lands at the expense of the permit holder. Due to direction found in the LRMP, *"Provide for continuation of existing summer home area at Pine Lodge"*, pages 60 and *"Provide for continuation of existing summer home area at Eagle Creek"* page 80, an amendment to the Forest Plan would be necessary to bring the LRMP into agreement and initiate the No Action Alternative of issuing the 10 year SUP.

There were no significant issues identified during the analysis. Therefore, no additional alternatives were developed.

Public Involvement

A proposal to issue new recreation residence term special use permit for all existing permittees of Eagle Creek and Pine Lodge recreation residence with lots or in lieu lots meeting the consistency review was listed in the Lincoln National Forest's Schedule of Proposed Actions (SOPA) on each quarter beginning with the January 2005 issue. A scoping letter was mailed February 23, 2005 to the 41 permit holders and 18 family members, Federal, state, local agencies. In addition, as part of the public involvement process on January 25, 2006, scoping letters were sent to three Native American Tribes for tribal consultation. The Notice of Proposed Action was published in the Legal Notice section of the Alamogordo Daily News on July 28, 2006 (EA page 7).

On June 11, 2004, a letter was sent to permittees who lost cabins in the Peppin Wildfire. The letter describing the current status and process to be used in address the loss of their cabins. On June 12, 2004 a meeting was held with these permittees. Forest Service policy and direction was provided. Letters dated June 23, 2004, September 9, 2004, and February 7, 2006 were mailed to permittees updating them to the status of Consistency Review and Environmental Analysis for issuance of a permit and construction of cabins.

Based on the 36 CFR Part 215 procedures, only two letters were received from scoping letters, SOPA and the Legal Notice. One letter was from the president of the Eagle Creek Association expressing the permittees desire for the issuance of a 20 year permit. The other letter was from a previous owner of a cabin in support of issuing a 20 year Permit.

Using the public comments, and issues from Forest Service personnel, the interdisciplinary team identified several issues regarding the effects of the proposed action. (see EA pages 7 & 8).

Main issues of concern included:

1. Potential for invasive weed species introduction from equipment during clean up of burnt sites or reconstruction of cabins.
2. The need of an approved liquid waste disposal septic system at cabins to reduce risk of contamination to ground and surface water.
3. Burnt lots safe for construction of cabins.
4. Threatened, endangered and sensitive species will be protected.

To address these concerns, the Forest Service created the alternatives described above.

Significance of the Findings

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. **Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.** Significant impacts can be both beneficial and adverse. My decision would have neither a significant beneficial or adverse impact because the acres affected are a small percentage of similar acres across the landscape, and the anticipated effects are similar to those in past projects which have not proven to cause significant impacts (EA Chapter 3)
2. **There will be no significant effects on public health and safety.** The Forest Service recognizes that the state and counties have the authority and jurisdiction, through the Clean Water Act, to regulate and enforce individual wastewater disposal systems by way of regulations, standards and codes. We recognize that these regulations, standards, and codes apply to recreation residence wastewater disposal systems because they are privately built, owned, and operated. A certificate of compliance from the state EPA will be required for each cabin (see EA pages 16).
3. **There will be no significant effects on unique characteristics of the area.** Areas such as historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecological critical areas will have no significant effects because there are no such areas to be affected (see EA pages 15-26).
4. **The effects on the quality of the human environment are not likely to be highly controversial.** The recreation residence program has been in place for over 90 years on the Lincoln National Forest, and it exists on many other National

Forest across the country making any effects well known and understood (see EA page 23).

5. **We have considerable experience with the types of activities to be implemented.** Recreation residences have existed within these tracts since 1906 and 1914. Adverse effects to the environment are reduced or eliminated through permit administration and permit compliance. Activities are well established practices and risks are well known and understood (see EA pages 1-3).
6. **The action is not likely to establish a precedent for future actions with significant effects.** Recreation residences are not unusual and do not represent or lead to any further unique actions (see EA page 6).
7. **This action in relation to other past, present, and foreseeable future activities will have not cumulative impacts.** A review of the EA's Environmental Consequences supports the findings that this proposal would not cause significant cumulative effects on the areas resources, even even when considered in relation to other actions. (see EA pages 14-26).
8. **This action will not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.** The proposed action will not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. Cultural Resource surveys have been conducted in the past for Forest projects within and around the tracts and there are no prehistoric or historic sites within the tracts. Consultation with the State Historic Preservation Officer (SHPO) has been done and concurrence received on the project. One of the tracts has been surveyed by a representative from SHPO for eligibility for inclusion to the National Register of Historic Places (see EA pages 24-25).
9. **This action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.** The Biological Evaluation and Assessment (BE&A) for the issuance of recreation residence Term Special Use Permits determined that no threatened, endangered, or proposed wildlife species will be affected by the proposed action. The Biological Evaluation for Sensitive Plants determined that no threatened, endangered, or proposed Plant species were found on any recreation residence lot. The BE&A concluded that no effects were likely to the Mexican Spotted Owl, Wootton's hawthorn, or Kerr's milkvetch (see EA pages 19-20).
10. **This action does not threaten a violation of Federal, State, and local laws or requirements for the protection of the environment.** The proposed action was

developed in accordance with applicable laws and regulations, and therefore, does not threaten to violate and Federal, state or local laws or requirements for the protection of the environment (i.e. Endangered Species Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, and the National Forest Management Act). Discussion of effects in the EA and the related references in the project file document that this project will not adversely affect soils, water quality, or threatened, or endangered species. A Consistency Review Analysis of the LRMP found that one of the Standards and Guidelines identified in the two management areas containing the recreation residence tracts did not meet current Forest Service Direction. An amendment to the LRMP will correct the inconsistency and make the LRMP consistent with the project. The proposed action is also consistent with the Lincoln National Forest Land and Resource Management Plan (See EA page 6).

Findings Required by Other Laws and Regulations

This decision to issue a term special use permit for permittees of the two recreation residence tracts, allow the construction of cabins lost in the wildfire, and amend the LRMP to be consistent with National Direction is consistent with the intent of the forest plan's long term goals and objectives listed on pages 5 & 6. The project was designed in conformance with land and resource management plan standards and incorporates appropriate land and resource management plan guidelines for recreation residence, (Land and Resource Management Plan, pages (60 & 80).

Implementation Date

If no appeal is filed, implementation of the decision may begin on, but not before, the fifth business day following the close of the 45 day appeal filing period (36 CFR 215.9(a)).

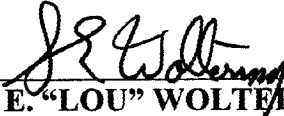
If an appeal is filed, implementation may not occur for 15 business days following the date of appeal disposition. In the event of multiple appeals of the same decision, the date of the disposition of the last appeal controls the implementation date (36 CFR 215.9(b)).

Administrative Review or Appeal Opportunities

This decision is subject to appeal in accordance with 36 CFR 215.7. A notice of appeal must be in writing and clearly state that it is a Notice of Appeal being filed in pursuant to 36 CFR 215.7. Appeals must be filed to, Regional Forester, Southwestern Region office, at 333 Broadway, NE Albuquerque, 87102 or email appeals-southwestern-lincoln@fs.fed.us within 45 days of the date of legal notice of this decision in the Alamogordo Dailey News.

Contact

For additional information concerning this decision or the Forest Service appeal process, contact Juan E. (Buck) Sanchez, District Ranger, Smokey Bear Ranger District, Lincoln National Forest, 901 Mechem, Ruidoso, NM 88345 (505) 257-4095.



S. E. "LOU" WOLTERING
Forest Supervisor

5-30-07
Date